

**\*OGC Has Reviewed\***

Glass vs. Ickes, 117 F.2d 273 (U.S.C.A., D.C., 1940)  
Cert. denied 311 U.S. 718.

This was an action of defamation by Glass against Harold L. Ickes, Secretary of the Interior. The action is based on an allegedly libelous press release issued by Mr. Ickes in which he made a general announcement that plaintiff, a former employee of the Department, was barred by Department regulations from practicing before agencies charged with the enforcement of The Connally Hot Oil Act, and explaining the regulation's purpose and its application to the plaintiff. The question before the Court was whether this communication was privileged to the extent that it could not be the subject of an action for libel. The Court, Vinson, A.J., pointed out that an act may be absolutely or conditionally privileged from civil liability. If it is a conditional privilege, allegations that improper motives prompted the defendant to act will serve to bring the latter into court. Absolute privilege is accorded in which allegations of malice are of no significance as considerations of public policy argue against suit in respect to certain types of acts. The Court held as well settled the ruling in the Vilas case that a departmental head is absolutely privileged from liability for defamatory statements made "more or less (in) connection with the general matters committed by law to his control or supervision." Plaintiff's contention that this privilege applies only to communications between governmental officials and not to

those from an official to the general public is rejected. The Court did state, however, that, "It may be that there are circumstances under which an official would exceed his prerogative in issuing a particular communication to the press. There are clearly other circumstances, however, when a department head may properly issue public statements in his official capacity. The question to be answered when an action for libel is brought on the basis of such a communication is simply whether the executive officer was within his official prerogative or duty in issuing it. More broadly -- was the public communication 'official' in character?" (At pages 277-278). >

In supporting the position of the Supreme Court in the Vilas case, the Court states the rule that a cabinet officer "is within his official right or prerogative, hence absolutely privileged, in informing persons having business with his department of official action affecting such business, together with relevant explanation thereof." (At page 280).

The Court therefore rules that to communicate information respecting the appellant's capacity to the indefinitely large group of persons with rights subject to the Hot Oil Act was a proper announcement, if not essential.

In<sup>a</sup>/concurring opinion, Groner, C.J., approves the rule of privilege set forth above, but points out that, "The necessity of the rule is obvious, but its cloak of absolute immunity offers such far reaching opportunity for

oppression, that it manifestly ought not to be extended beyond the impulse that gave it being." (~~At page 281~~). > . . . . .

Judge Groner raises some question as to whether the press release in the present instance was in the performance of an official function. However, as he was unable to state that it was not in accordance with such functions, he concurred in the opinion, but pointed out his fear that, "we may have extended the rule beyond the reasons out of which it grew and thus unwittingly created a privilege so extensive as to be almost unlimited and altogether subversive of the fundamental principle that no man in this country is so high that he is above the law." (At <sup>10. 281-</sup>~~page~~ 282). >